

## **Resort Board of Directors Act of 2005**

Ordinance # 05-800-03

### **Article I. Purpose; Findings**

1.01. *Purpose.* The purpose of this Act is to establish a Resort Board of Directors to provide monitoring, oversight, and direction regarding the management of the gaming enterprise in order to maximize the income for the Little River Casino Resort and the Tribe.

1.02. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:

a. the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to "...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;

2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]” Article IV, Section 7(a).

b. The Little River Casino Resort has developed into a highly successful business enterprise of the Little River Band of Ottawa Indians and,

c. The Little River Casino Resort, a sophisticated and complex business enterprise, continues to grow and expand as the Tribe’s primary source of revenue and jobs; and,

d. The nature of the Little River Casino Resort business, a 24-hour year-round operation, requires constant monitoring, oversight, and direction and would benefit by the assistance of a group of qualified individuals who possess specialized knowledge and expertise in the gaming industry; and,

e. The establishment of a Board of Directors for the Little River Casino Resort to provide appropriate monitoring, oversight, and direction regarding the management of the Little River Casino Resort will serve the best interests of the Tribe by maximizing the Little River Casino Resort’s income, reducing expenses where appropriate, and minimizing the potential for political interference of business decision-making, all in accordance with the goals and budgets established by the Tribal Council by law or resolution; and,

f. Article IV, Section 7(f) of the Constitution of the Tribe (“Constitution”), states that the Tribal Council has the power to create subordinate organizations and to delegate to such organizations the power to manage the enterprises of the Tribe; and,

g. Article V, Section 5(a)(8), of the Constitution states that the Ogema has the power to manage the economic affairs and enterprises of the Tribe consistent with ordinances and resolutions enacted by the Tribal Council.

h. The Resort Board of Directors Act of 2005 is the result of the transition from a management run Resort to a Tribally managed Resort and the creation, for the first time, an tribally chartered enterprise and governing board, and the finalization of the formal action has required the Tribal Council to consider the formal development of laws which were ultimately presented for Public Comment and adoption.

i. The Resort Board of Directors Act of 2005 is the end result of the legislative development and that the members appointed to sit on the Board of Directors created under the original actions have consistently been identified by the Tribal Council as those members seated on the Board of Directors under all prior variations of the legislation.

j. The original members appointed to the Board of Directors have terms ending in 2006 and 2008 in order to maintain the staggering of terms as created in the original legislation.

### **Article II. Adoption; Amendment; Repeal; Severability**

2.01. *Adoption.* This Ordinance is adopted by resolution # 05-0720-328.

2.02. *Amendment.* This Ordinance may be amended by the Tribal Council in accordance with the Constitution and any rules set forth governing amendment of laws of the Little River Band of Ottawa Indians.

2.03. *Severability Clause.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

2.04. *Title.* This Ordinance shall be referred to as the “Resort Board of Directors Act of 2005” (“Act”).

2.05. *Repeal.* The following Resolutions are hereby repealed: Resolution #04-0721-307, Resolution #04-0922-380, Resolution #04-1013-405, and Resolution #04-1027-432.

### **Article III. Definitions.**

3.01. *Definitions.* For purposes of this Ordinance, certain terms are defined in this Article. The word “shall” is always mandatory and not merely advisory.

3.02. *Good cause,* as used in this ordinance as action for removal, means –

a. *Removal - by Board.* A member of the Board of Directors shall be removed for the following reasons by the Board of Directors.

1. Failure to attend four meetings of the Board of Directors, including special or emergency meetings, within a 12 month period.
2. Revocation of a professional license, permit or certification that reflects on the qualifications of the member to sit on the Board or reflects on the professional responsibilities and integrity of the member.
3. Conviction of a felony, or conviction of a misdemeanor act that impinges on the professional responsibilities and integrity of the member.
4. Conduct which would be considered a violation of Tribal employment law.

b. *Removal - Ogema.* A member of the Board of Directors shall be removed by the Ogema only for the following reasons.

1. Failure to attend six meetings of the Board of Directors, including special or emergency meetings, within a twelve month period.
2. Disenrollment from the Tribe of a member seated on a restricted membership position.
3. Failure of the Board of Directors to carry out any removal under the reasons set forth under subsection (a).
4. Conduct which would be considered a violation of Tribal employment law.

### **Article IV. Board of Directors**

4.01. *Creation of the Board of Directors.*

a. The Tribal Council hereby creates and establishes the Board of Directors for the Little River Casino Resort.

b. The Board of Directors shall be subject to the Constitution, laws, and resolutions of the Tribe, including the legislative authority of the Tribal Council to enact laws and resolutions and the executive authority of the Ogema to carry-out the laws and resolutions enacted by the Tribal Council.

c. The Board of Directors shall take an oath of office given by the Ogema, and shall file a signed confidentiality statement.

d. The previously established Business Board is hereby abolished.

4.02. *Appointment by Nomination and Confirmation, and Removal.*

- a. The Members of the Board of Directors shall be selected upon nomination by the Ogema and confirmation by the Tribal Council.
- b. Article V, Section 5(a)(4), of the Constitution states that the Ogema has the power, with the approval of the Tribal Council, to appoint heads of subordinate organizations created by ordinance.
- c. Article IV, Section 7(h), of the Constitution states that the Tribal Council has the power to approve appointments of heads of subordinate organizations created by ordinance.
- d. The Ogema shall have the power to remove a Board Member for good cause, after providing the Board Member with due process unless such removal will result in the inability of the Board to establish a quorum of the Board of Directors; provided, that only one Member of the Board of Directors shall be subject to removal at a time, and; provided, further, that any vacancy in a seat on the Board of Directors shall be filled before the Ogema initiates the process to remove a Member of the Board of Directors. The Tribal Council may overturn a decision by the Ogema to remove a Member of the Board of Directors by a two-thirds majority vote of the Tribal Council.

4.03. *Composition of the Board of Directors.*

- a. The Board of Directors shall be comprised of five (5) Members.
- b. If the Ogema is unable to fill vacancies, he or she shall identify the reasons why vacancies cannot be filled within the time lines set forth in this section, including the attempts made to identify qualified persons, and what qualifications are missing. A vacancy exists when notice is received by the Ogema under section 4.10.
- c. The Board of Directors performs duties necessary to the activities of the Little River Casino Resort such that it is important that vacancies be filled with all reasonable speed. The Ogema shall submit nominations for vacancies on the Board of Directors within 45 days of receipt of notice of a vacancy. Provided that, for those vacancies existing on the date of adoption of this ordinance, the Ogema shall submit nominations 30 days after the date of adoption.

4.04. *Qualifications of Members of the Board of Directors.*

- a. All five (5) Members of the Board of Directors shall be enrolled Members of the Tribe.
- b. The Board of Directors shall include the following qualified individuals:
  - 1. One Member of the Board of Directors shall have at least five (5) years experience in business or financial matters;
  - 2. One Member of the Board of Directors shall have at least five (5) years experience in the management of a gaming or hospitality enterprise(s); and,
  - 3. One Member of the Board of Directors shall be a licensed attorney and have at least five (5) years experience as legal counsel to a business enterprise.
- c. If a vacancy occurs on the Board of Directors in one or more of the seats which require a minimum qualification as set by Sections 4.04 (a) and (b) above, the remaining Members of the Board of Directors may continue to conduct business.
- d. All Members of the Board of Directors shall possess and maintain a Gaming License issued by the Gaming Commission of the Tribe.
- e. The Tribal Council may elect to secure a bond and/or insurance covering activities of Members of the Board of Directors. All Members of the Board of Directors shall cooperate fully with Tribe to secure bonding and/or insurance covering his or her activities as a Member of the Board of Directors.
- f. The following individuals shall be prohibited from serving as a Member of the Board of Directors:
  - 1. any person employed by the Little River Casino Resort or the Tribe; and,

2. any elected official of the Tribe.

4.05. *Terms of Office.* Each Member of the Board of Directors shall serve a four (4) year term of office. A term begins on September 1, and ends on August 31 four years later. A vacancy prior to the end of the term shall, if less than 18 months remaining on the last date in office, be filled for the remainder of the term and a full four year term; and, if more than 18 months remaining on the last date in office, shall be filled only for the remainder of the vacant term.

4.06. *Quorum.* A quorum of the Board of Directors shall consist of any three (3) Members of the Board of Directors. A quorum shall be required to conduct business.

4.07. *Meetings.* The Board of Directors shall hold meetings at least once a month.

4.08. *Procedures.* The Board of Directors shall be authorized to establish its own procedures.

4.09. *Compensation.* Each Member of the Board of Directors shall be paid reasonable compensation as authorized by the Tribal Council; provided, that such compensation shall be subject to the power of the Tribal Council to appropriate funds for such purposes.

4.10. *Vacancy - Notice; Exists.*

a. The Board is required to notify the Ogema and Tribal Council, in writing, when a vacancy is created by conclusion of a term, removal by the Board, or resignation by a member. A vacancy exists upon receipt of the notice by the Ogema.

b. A vacancy exists upon removal by the Ogema and where the Tribal Council does not overturn the removal determination by the Ogema under section 4.02(d).

4.11. *Posting Notice of Vacancy for Applicants.* The Ogema shall post, for 30 days, in the Tribal newspaper, that a vacancy on the Board of Director exists, the qualifications for the vacant position, the term of office for the vacant position, and the open and closing date of the application period. All applications received shall be forwarded to the Tribal Council with the nomination presented under section 4.02(a).

## **Article V. Responsibilities and Duties**

5.01. *Responsibilities.* The Board of Directors shall be responsible for the following:

a. To ensure compliance with the laws and resolutions enacted by the Tribal Council including any goals for the Little River Casino Resort established by the Tribal Council; and,

b. to ensure compliance with all applicable laws and regulations including the Indian Gaming Regulatory Act, the Tribal-State Gaming Compact, the Gaming Ordinance of the Tribe, and all applicable internal operating procedures and minimum internal control standards; and,

c. to account for and transfer, or to direct the accounting and transfer of, all revenues generated by the Little River Casino Resort, excluding authorized operating funds, on at least a 48-hour basis to an account or accounts authorized and established by the Tribal Council by law or resolution provided, that such transfers shall be made according to written procedures established by the Board of Directors which shall be subject to modification by the Tribal Council by law or resolution; and,

d. to maintain and increase the number of Members of the Tribe employed by the Little River Casino Resort; and,

e. to maintain and increase the number of Members of the Tribe employed by the Little River Casino Resort in management level positions; and,

f. to provide oversight and direction to the General Manager of the Little River Casino Resort; and,

g. to maintain a consistent and regular attendance record; and,

h. to be held accountable, to the highest degree, for the accuracy and thoroughness of the records

and reports of the Little River Casino Resort; and,

i. to be responsible for the successful overall direction and operation of all activities of the Little River Casino Resort in accordance with the laws and resolutions enacted by the Tribal Council.

5.02. *General Duties.* The Board of Directors shall:

- a. create, develop, and implement an effective strategy of business organization for the Little River Casino Resort including setting objectives for future growth and expansion in accordance with the Annual Operating Plan and Annual Budget approved by the Tribal Council; and,
- b. ensure the quality of management activities and operations in all areas of the Little River Casino Resort; and,
- c. have all duties and responsibilities customary for a Board of Directors of a gaming, restaurant, hotel, and entertainment enterprise including, without limitation, responsibility for the overall operation of the Little River Casino Resort.

5.03. *Specific Duties.*

a. *Annual Budget.* The Board of Directors shall prepare a proposed Annual Budget for the Little River Casino Resort in accordance with the power of the Ogema to prepare and present an annual budget to the Tribal Council under Article V, Section 5(a)(5) of the Constitution, and in accordance with the power of the Tribal Council to approve or amend the annual budget; provided, that the Annual Budget shall include at a minimum:

1. operating funds for the Little River Casino Resort; and,
2. any proposed capital expenditures; and,
3. short-term and long-term profit goals, and,
4. operating funds for the Board of Directors including funds for office space, staff, consultants, and compensation for Members of the Board of Directors.

b. *Annual Operating Plan.* The Board of Directors shall prepare an Annual Operating Plan for the Little River Casino Resort, including financial goals and other goals, which shall be subject to approval by the Tribal Council by law or resolution.

c. *General Manager.* The Board of Directors shall have the power to hire a General Manager for the Little River Casino Resort in accordance with the laws and resolutions of the Tribe. The Board of Directors may enter into an employment contract with the General Manager; provided, that such contract shall be subject to ratification by the Tribal Council. The Board of Directors shall evaluate the performance of the General Manager on an annual basis or more frequently as needed. The Board of Directors shall have the power to terminate the employment of the General Manager in accordance with the laws and resolutions of the Tribe.

d. *Personnel Manual.* The Board of Directors shall have the power to approve and amend the Personnel Manual for the Little River Casino Resort, subject to the overriding authority of the Tribal Council to alter such Personnel Manual by law or resolution. The Board of Directors shall provide at least a 30-day advance notice to the Ogema and Tribal Council of all proposed amendments to the Personnel Manual.

e. *Appeals Board.* The Board of Directors shall serve as an appeals body to decide the final outcome of all decisions to hire, transfer, suspend, lay-off, evaluate, promote, discharge, assign, reward, or discipline any employee of the Little River Casino Resort, except the General Manager, in accordance with applicable personnel laws and regulations. A decision by the Board of Directors shall be final for purposes of Judicial review.

f. *Reporting.* The Board of Directors shall prepare and submit a written report to the Ogema and Tribal Council on monthly basis. The monthly report shall summarize the status of all material aspects of the operation of the Little River Casino Resort. The Board of Directors shall prepare

and submit a comprehensive written annual report to the Ogema and Tribal Council by October 1<sup>st</sup> of each year. The annual report shall address all material aspects of the casino operation for the preceding twelve-month period and shall include information on the status of all Departments within the Little River Casino Resort.